

Panaji, 7th April, 2008 ( Chaitra 18, 1930)

SERIES II No. 1

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

#### AWARD

Department of Labour

(Passed on this 15th day of October, 2007)

Notification

This is a reference under Section 10(1) (d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

No. 28/18/2007-LAB/1178

1. Facts of the present reference, stated in brief, are as follows:

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 15-10-2007 in reference No. IT/57/2003 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

The Government of Goa in exercise of powers conferred on it by Section 10(1) (d) of the said Act, 1947, under order dated 28-1-2004 has referred to this Industrial Tribunal following dispute for adjudication.

By order and in the name of the Governor of Goa.

#### SCHEDULE

*Hanumant T. Toraskar*, Under Secretary (Labour).

(1) Whether the following demands made by Vicco Laboratories (Goa) Workers Union to the management of M/s. Vicco Laboratories are legal and justified?

Porvorim, 14th November, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I AT PANAJI-GOA

#### Demand No. 1: Pay Scales

(Before Dilip K. Gaikwad, Presiding Officer)

#### Grade:-

Ref. No. IT/57/2003

W1-1750-60-2050-80-2800-90-3250-95-3725-100-4225-105-4750.

Workmen,  
Rep. by Vicco Laboratories (Goa)  
Workers Union,  
Ponda-Goa.

W2-1850-65-2175-75-2550-85-2975-95-345-100-3950-105-4475-110-5025.

V/s

W3-1950-70-2300-80-2700-90-3150-100-3650-110-4200-115-4775-120-5375

M/s. Vicco Laboratories (Goa),  
24/1, D-2, Mologa-de-Orora,  
Corlim, Tiswadi-Goa.

W4-2050-75-2425-85-2850-95-3325-105-3850-115-4425-120-5025-125-5650.

.... Workmen/Party I

.... Employer/Party II

#### Demand No. 2: Flat Rise

Workman/Party I is represented by Representative P. Gaonker.

Union demands that all the workmen shall be given the flat rise of Rs. 750/-. The above amounts should be added to the existing basic and thereafter fitted in the revised pay scale in the higher stage.

Employer/Party II is represented by Adv. M. S. Bandodker.

**Demand No. 3: Seniority Increments**

Union demands that the workmen should be given seniority increments as mentioned below:

Service upto 3 years	: One increment
Service from 3 years to 5 years	: Two increments
Service above 5 years	: Three increments

**Demand No. 4: Fixed Dearness Allowance**

Union demands that the fixed dearness allowance shall be revised by adding Rs. 1000/- at AICPI 2000 (1960=100) and thereafter variable dearness allowance shall be paid at the revised rate of Rs. 3/- per point rise beyond 2000 points (1960=100) the computation of variable dearness allowance shall be made quarterly based on the average consumer price index of preceding quarter.

**Demand No. 5: House Rent Allowance**

Union demands that house rent allowance should be paid at the revised rate of 30% of basic and dearness allowance, as the cost of accommodation is very high in Goa being Tourist State.

**Demand No. 6: Education Allowance**

Union demands that education allowance shall be paid at the revised rate of Rs. 500/- per workman per month.

**Demand No. 7: Conveyance Allowance**

Union demands all the workmen shall be paid conveyance at the rate of Rs. 650/- per month.

**Demand No. 8: Transport Facility**

Union demands that the free transport facility should be provided to those workmen who are presently not provided with this facility. The detail routes shall be given at the time of negotiations.

**Demand No. 9: Paid Holiday**

Union demands that all the workmen shall be granted paid holidays at the rate of 16 days per year. Union further demands that the festival holidays which falls on Sunday shall be changed to next day or one day earlier, which shall be finalized in consultation with the Union.

**Demand No. 10: Leave**

Union demands that the workmen should be given leave on following basis:

- (A) *Earned Leave*: Union demands that all the workmen should be given earned leave at the rate of 30 days earned leave per year with accumulation upto 120 days and leave shall be allowed to be taken 10 times in a year.

(B) *Casual Leave*: Union demands that all the workmen should be given casual leave at the rate 15 days per year with encashment facility.

(C) *Sick Leave*: Union demands that all the workmen should be given sick leave at the rate of 15 days per year and accumulation upto 6 days.

**Demand No. 11: Leave Travel Assistance**

Union demands that leave travel assistance should be paid at the revised rate of Rs. 3500/- per annum, with minimum of four earned days leave. The amount shall be paid one week before the commencement of leave.

**Demand No. 12 Food/Canteen Subsidy**

Union demands that all the workmen shall be paid canteen subsidy at the rate of Rs. 350/- per month. Union also demands that the workers should be provided with canteen facility in the factory.

**Demand No. 15: Loan**

Union demands that interest free loan of Rs. 25,000/- to meet the expenses towards the purchase of house hold articles or marriage of self or his/her family members, scooters, etc.

**Demand No. 16: Gifts**

Union demands that all the workmen should be given service award as mentioned below:

Service upto 5 years gift, worth Rs. 3,500/- with service certificate.

**Demand No. 17: Yearly Gift**

Union demands that all the workmen shall be given yearly gift at the time of festival of Rs. 1,000/- each once in a year.

**Demand No. 18: Supply of Raincoats/Umbrellas & Safety Shoes**

Union demands that all the workmen shall be supplied with raincoats of duck back, gumboots of Swastika make, Stag brand umbrella and safety shoes of Bata make every year.

**Demand No. 20: Ambulance:**

Union demands that the ambulance should be provided at factory.

**Demand No. 21: Shift Allowance**

Union demands that those workers who work in shifts shall be paid shift allowance at the rate of Rs. 25/- per shift in 2nd shift.

**Demand No. 22: Festival Advance**

Union demands that those workers should be granted festival advance at the rate one month's gross salary once in a year which shall be recovered in 10 equal installments.

**Demand No. 23: Supply of Tea & Snacks in the Shift**

**ORDER**

Union demands that the tea and snacks should be given to the workers working in shifts.

**Demand No. 24: Rest Room**

Union demands that the proper rest room facility should be provided in the factory premises.

**Demand No. 25: Washing Allowance**

Union demands that the washing allowance shall be paid at the rate of Rs. 100/- p. m. as the management is not supplying washing uniform.

**Demand No. 26: Personal Pay**

Union demands that the existing personal pay shall be revised by adding Rs. 500/- each.

**Demand No. 27: Supply of Safety Equipment**

Union demands that the safety equipment such as mask, safety shoes etc. shall be provided.

**Demand No. 27 (a): Special Leave**

Union demands that whenever the union committee members attend the united work before the authorities, such committee members shall be granted special leave.

**Demand No. 27 (b): Supply of Chappals**

Union demands that two pairs of chappals should be given to each workman once in a year.

**Demand No. 27 (c): Supply of Hot Water**

Union demands that hot water should be provided as several workers are using hot water.

**Demand No. 28**

Union reserve the right to amend, add, delete any demands during the time of negotiations.

(2) If not, what relief the workmen are entitled to?"

2. In response to notices both parties put their appearance in this Tribunal. The Party I presented its claim statement on 7-6-2004 at Exb. 4. Party II filed its written statement on 6-9-2004 at Exb. 5. Party I submitted its rejoinder on 30-9-2004 at Exb. 7.

3. On basis of pleadings, the then learned Presiding Officer framed issues on 21-10-2004 at Exb. 8. The reference is now on the stage of hearing.

4. Today representative and who is also one of the office bearers of Party I/Union and learned advocate of Party II filed terms of settlement and requested under application Exb. 13 to dispose off the reference by passing an award in terms of settlement which are at Exb. 14. Both parties have amicably settled the dispute under the terms of settlement which are taken on record. Hence, I proceed to adjudicate the reference by passing order as follows:—

(1) The reference is adjudicated in terms of settlement (Exb. 14) as follows:—

**1. Applicability**

Except otherwise specified, the terms of the settlement will apply to permanent workmen of the company as on 1-8-2002 and continue to remain in service of the company as on the date of signing this settlement.

**2. Period of Settlement**

2.1.1. The settlement shall cover the period from 1-8-2002 to 30-6-2008.

2.2. It is agreed that for the period 1-8-2002 to 30-3-2005, in addition to Interim Relief granted from 1-2-2003 to 31-3-2005 the management shall pay each permanent workmen a lumpsum of Rs. 20,000.00 in full and final settlement of their demands for the said period. The workmen shall not have any further claim whatsoever for the said period.

**3. Grades and Scales of Pay**

Effective from 1-4-2005 the old Grades shall be replaced by new Grades as shown hereunder.

**Old Grades**

Grade I 600-20-740-25-915-30-1125-35-1370.

Grade II 760-25-910-30-1120-35-1365-40-1685.

Grade III .....

**New Grades**

W-I 600-25-775-35-1020-45-1335-55-1720-65-2175-75-2700.

W-II 700-35-945-45-1260-55-1645-65-2100-75-2625-85-3220.

W-III 850-45-1165-55-1550-65-2005-75-2530-85-3125-95-3790.

**4. Fitment**

4.1. With effect from 1-4-2005 the permanent workmen who are presently in Old Grade I shall be placed in New Grade W II and those who are in Old Grade II shall be placed in New Grade W III.

4.2. With effect from 1-4-2005 all the permanent workmen who are placed in New Grade W III shall be granted Rs. 1000/- in their basic salary. If the basic salary does not fit in the step in the said grade then he shall be fitted in the next higher step in the Grade.

4.3. Effective from 1-4-2006 all the permanent workmen shall be paid an additional amount of Rs. 100/- per month in fixed dearness allowance and Rs. 100/- per month in the house rent allowance.

4.4 Effective from 1-4-2007 all the permanent workmen shall be paid an additional amount of Rs. 100/- per month in fixed dearness allowance and Rs. 100/- per month in the house rent allowance.

### 5. Fixed Dearness Allowance

With effect from 1-4-2005 all the permanent workmen shall be paid fixed dearness allowance as follows:

Grade W-III Rs. 970/- per month.

Grade W-II Rs. 910/- per month.

### 6. House Rent Allowance

With effect from 1-4-2005 all the permanent workmen shall be eligible for payment of house rent allowance as follows:

Grade W-III Rs. 850/- per month.

Grade W-II Rs. 790/- per month.

### 7. Compensatory Allowance

With effect from 1-4-2005 all the permanent workmen shall be eligible for payment of compensatory allowance at the rate of Rs. 625/- per month.

### 8. Educational Allowance

With effect from 1-4-2005 all the permanent employees shall be eligible for payment of educational allowance at the rate of Rs. 150/- per month.

### 9. Washing Allowance

With effect from 1-4-2005 all the permanent workmen shall be paid washing allowance of Rs. 250/- per month.

### 10. Personal Pay

With effect from 1-4-2005 all the permanent workmen shall continue to be paid personal pay at the rate of Rs. 150/- per month as per the existing practice.

### 11. Productivity Measures

It is agreed by and between the parties that the revised wages and allowances are directly linked to achieving average production target of at least 75% of the machine capacity per working shift as per Annexure "A" over a period of each calendar month. The workmen have assured to fully co-operate with the management in achieving average target of 75% per working shift over a period of calendar month.

### 12. Leave and Holidays

#### (A) Privilege Leave

- i) With effect from 1-4-2005 confirmed employees shall be granted privilege leave of 20 days per calendar year.
- ii) Employees shall be allowed to avail of privilege leave of not less than 3 days at a time and not more than 3 times in a calendar year.
- iii) Privilege leave shall be calculated on the basis of a calendar year on pro-rata basis and the same shall be credited to an individual account on 1st January of the following year.

- iv) Employees shall be allowed to accumulate privilege leave of maximum 60 days at any given time. Privilege leave beyond 60 days shall stand lapsed.
- v) Employees desiring to avail of privilege leave shall make an application in a prescribed form minimum 15 days in advance.
- vi) Privilege leave shall be granted subject of exigencies of work and the decision to the effect shall be communicated to the employees sufficiently in advance.

#### (B) Casual Leave

- i) All permanent employees shall be granted casual leave of 7 days per calendar year effective from 1-4-2005 to meet unforeseen emergencies.
- ii) Casual leave can be availed for not more than 2 days at a time.
- iii) To the extent possible application for casual leave shall be made in advance. If not possible, employees shall get the absence regulated immediately after reporting for duty.
- iv) Unavailed casual leave at the end of the calendar year shall automatically lapse.

#### (C) Sick Leave

- i) Since all the employees are covered under the ESI Scheme they are governed under the said ESI Scheme for the purpose of sick leave. However as a special case, the management has agreed to grant sick leave of maximum 5 days in a calendar year.
- ii) Employees shall have to produce a medical certificate from ESI panel doctor if sick leave is taken for more than one day at a time.
- iii) Employees requiring absence from work on account of sickness shall communicate to the company immediately followed by medical certificate of an ESI Doctor to that effect.

### 13. Holidays

Employees shall be entitled to 8 paid holidays in a calendar year. The list of holidays shall be jointly finalized by the management and the union in the month of December for the following calendar year.

### 14. Bonus

All the employees shall be paid bonus in accordance with the provision of the Payment of Bonus Act, 1965.

### 15. Uniforms/Sleepers

Every employee shall be given two pairs of uniforms and one pair of rubber slippers per year as per the existing practice.

### 16. Washing Soap

Every employee shall be eligible for two cakes of washing soaps per month available in the market as per the existing practices.

**17. Festival Advance**

- i) Employees shall be granted festival advance of Rs. 1600.00 once in a year either during Ganesh Chaturthi or Diwali.
- ii) The festival advance shall be recovered in 4 equal monthly installments.
- iii) In the event festival advance is disbursed prior to 15th of a month, the recovery of installments shall commence from the wages of that month onwards. Otherwise recovery shall commence from the following month.
- iv) Employees shall make request to the Personnel Department for availing of festival advance at least 10 days prior to the festival and the employer shall disburse festival advance at least 3 days prior to the festival.

**18. Salary Slip**

Every employee shall be given salary slip showing earnings and deductions alongwith the monthly payment of wages and Grades shall be mentioned.

**19. General**

19.1. Except basic wages, fixed dearness allowance and personal pay and no other allowance shall be taken into account for the purpose of calculating provident fund, gratuity and bonus.

19.2. It is agreed that this settlement is a package deal and is in full and final settlement of all other demands covered under the Charter of Demands served on 12-7-2002 & which are not specifically dealt with herein were discussed and withdrawn and further that during the operative period of this settlement the union/workmen shall not raise, persue and/or agitate any demand of whatsoever nature whether fully or partially settled herein or any other demand involving financial liability on the company.

19.3. The union and the workmen appreciate that in order to improve the competitive status of products and profitability it is necessary for the company to utilize its resources effectively including continual updating of technology. For this purpose the union and workmen agree to co-operate with the management to achieve improved efficiency and productivity.

19.4. The union and the workmen assure full co-operation in elimination of wasteful practices, permitting flexibility in development of employees from one work area to another and one department to another.

19.5. The union and workmen agree to give full co-operation to the management in the maintenance of discipline, reduction of absenteeism and adhering to good manufacturing practices and safety regulations.

19.6. If by legislation or otherwise, benefits analogous or similar to those granted under this settlement are introduced by the State or Central Government, the employees will be entitled to opt in favour of the totality of the benefit given by such legislation or by this settlement but not both.

19.7. It is agreed that the management, the union and the workmen undertake to maintain good industrial relations and further agree not to support or indulge in unfair labour practices and whenever conflicts of interest arise they shall be resolved in a peaceful and legitimate manner through mutual discussion and/or recourse to legal machinery provided under the law.

19.8. The management and the union/workmen agree that this settlement is in full and final settlement of the dispute which is the subject matter of reference No. IT/57/2003. The demands not specifically mentioned in this settlement are deemed to have been settled as withdrawn. The management and the union/workmen agree to jointly approach the Industrial Tribunal of Goa to pass an award in terms of the settlement for disposing of the reference No. IT/57/2003.

19.9. It is agreed by the union and the workmen that as and when required, to meet the market demand and fulfill the orders, the workmen shall stay on overtime duty beyond the normal working hours in order to complete orders to meet the market requirement. The workmen shall also stay on overtime as and when it is required by the management. Refusal to do so shall be treated as the breach of settlement.

19.10. It is agreed by the union and the workmen that they shall start work at 8.00 a.m. and shall not waste time on any pretext. Similarly they shall stop the work only at the end of the shift i.e. at 4.30 p.m. and two workmen shall stay for 15 minutes extra for clearing the machines for which they shall be paid overtime. However, they shall not take more than 30 minutes for lunch break and 10 minutes each for tea breaks. In the event the breakdown on the machine as done in the past fail to do so, the management shall have the right to deduct wages proportionate to the production time lost. They shall also attend to day to day break down on the machine as done in the past.

19.11. Both the parties agree to register this settlement with the office of the Commissioner, Labour, Government of Goa as per the provisions of the Industrial Disputes Act, 1947.

**20. Arrears**

It is agreed by the employer that the lumpsum amount under clause 2 (2.2) and also arrears arising out of this settlement shall be calculated and paid on or before 31-8-2005.

(2) No order as to costs.

(3) The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-  
(Dilip K. Gaikwad),  
Presiding Officer,  
Industrial Tribunal-cum  
-Labour Court-I.

## Notification

No. 28/18/2007-LAB/1178

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 30-10-2007 in reference No. IT/61/95 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

*Hanumant T. Toraskar*, Under Secretary (Labour).

Porvorim, 14th November, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR  
COURT-I AT PANAJI-GOA

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/61/95

Kishore Kudnekar,  
Electricity Quarters,  
Room No. B-28,  
Altinho, Panaji-Goa.

.... Workman/Party I

V/s

The Goa Urban Co-operative  
Bank Ltd.,  
Head Office,  
Panaji-Goa.

.... Employer/Party II

Party I/Employee is represented by Subhas Naik  
(representative).

Party II/Employer is represented by Adv. G. K. Sardesai.

AWARD

(Passed on this 30th day of October, 2007)

This is a reference under Section 10(1) (d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1) (d) of the said Act, 1947, under order dated 2-11-1995 has referred to this Industrial Tribunal following dispute for adjudication.

SCHEDULE

- (i) Whether the action of the management of the Goa Urban Co-operative Bank Ltd., Panaji-Goa in terminating the services of Shri Kishore Kudnekar, sub-staff/peon, with effect from 23-9-1994 is legal and justified?

- (ii) If not, to what relief the workmen is entitled?

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I presented his claim statement on 15-1-1996 at Exb. 4. It appears from the claim statement that the Party I was appointed as a sub-staff/peon on probation in the year 1988 in establishment of the Party II. He came to be confirmed in the service with effect from 15-5-1989. When he was working in Nagarcem branch of the Party II, he was served with charge sheet by making allegations as follows:

- i. It has been reported that you are habitual late-comer, as such you are unable to maintain the punctuality in your office timings. This was brought to your notice time and again. Our letter No. 16/N/537 of 6-6-92, 16/N/2444 of 22-1-93, 17/N/745 of 25-6-93 relates in the matter.
- ii. Further, you, without any prior intimation/authorization of leave, habitually remained absent on several occasions like on 4-6-92, 5-6-92, 1-2-93, 16-3-93, 20-5-93, 21-5-93, 28-5-93, 14-6-93 etc.
- iii. By our letter No. 16/N/2444 of 22-1-93 and HO/GM/29/N/140 of 25-1-93, you were advised to submit your reply to the memo issued to you. We have not received your explanation.
- iv. It is reported that on 25-6-93, you reported for duty at 10.30 a.m. While the office timing is 9.30 a.m. The Branch Manager, Mr. Shirvaikar objected and instructed you not to attend the duty on that day as you were late. He further directed you to report to Head Office with a letter, which was being typed by Mr. Fernandes. However, when Mr. Fernandes was typing the letter you went to him and started abusing and threatened him with dire consequences. It is further reported that you kicked a chair and threw it on the floor and started abusing Mr. Shirvaikar and Mr. Fernandes in filthy language on the premises and in the presence of customers of the Bank.
- v. Your above acts, if proved, constitute the following acts of misconducts as per Clause XII of settlement mentioned underneath:

Clause XII:

- c) Drunkenness of riotous or disorderly or indecent behaviour on the premises of the bank.
- d) Wilful damage or attempt to cause damage to the property of the bank or any of its customers.
- e) Wilful insubordination or disobedience of any lawful and reasonable order of the Management or of a superior.
- n) Unpunctual or irregular attendance.
- o) Neglect of work, negligence in performing duties. Vide the said letter, the bank informed Shri Kudnekar that an enquiry would be conducted. Shri Rohit

Lobo, Advocate, was appointed as enquiry officer and date of enquiry was fixed on 19th August, 1993 at Head Office at Panaji.

3. The Party I was served with suspension letter also alongwith the charge sheet. The Party II by making appointment of Rohit Lobo, as Enquiry Officer held inquiry into the allegations made against the Party I. The Enquiry Officer after holding inquiry found the Party I guilty of allegations stated in the charge sheet. The Party II issued notice on 2-8-1994 and called upon the Party I to show cause as to why he should not be dismissed from the service with immediate effect. The Party I gave reply to the show cause notice on 16-8-1994 stating that there is no justification to dismiss him from the service. The Party II thereafter dismissed him from service under its letter dated 23-9-1994 with immediate effect. By sending letter dated 29-9-1994 he informed the Party II that the action of terminating his service is illegal and unjustified. He requested Party II under this letter to reinstate him in the service with full back wages and with continuity of service. The Party II did not consider his request. Therefore, he raised dispute before Labour Commissioner, Government of Goa. Conciliation proceeding held by Labour Commissioner resulted failure. Therefore, the Government of Goa by its Order dated 2-11-1995 has referred the dispute to this Industrial Tribunal for adjudication as stated earlier.

4. Further it appears from claim statement that, according to the Party I, allegations made in the charge sheet are vague and as such he could not get proper opportunity to defend himself, that, the Enquiry Officer recorded findings without giving proper reasons, that, the findings recorded by the Enquiry Officer are perverse, and that, the inquiry held against him is in violation of principles of natural justice. Termination of his service is illegal and unjustified. Punishment of dismissal from the service is highly disproportionate having regard to facts and circumstances of the case. Maximum punishment that can be imposed is stoppage of increment for a period of not more than six months as per Service Rules. Therefore, by presenting the claim statement, he prayed for setting aside dismissal order and for reinstatement with full back wages and with continuity in service.

5. The Party II resisted the claim statement by filing its written statement on 15-4-1996 at Exb. 5. It appears from written statement that, charge sheet served upon the Party I was in respect of grave acts of misconduct committed by the Party I. The inquiry conducted against the Party I is in accordance with the procedure laid down in settlement dated 14-10-1992 and in conformity with principles of natural justice. The Party I was given full opportunity to defend himself. The Enquiry Officer recorded findings by appreciating evidence led in the inquiry proceedings and by giving reasons in detail. Management of the Party II gave sufficient opportunity to the Party I to show cause as to why he should not be dismissed from service. Considering reply given by the Party I, facts and circumstances of the case, and gravity of misconduct proved against the Party I, management

of the Party II dismissed the Party I from service. Punishment of dismissal imposed upon Party I is proportionate having regard to nature of misconduct committed by the Party I. Therefore, the Party II has entreated for dismissal of the reference.

6. The Party II by carrying out amendment in written statement further alleged that the Party I is involved in activities of criminal nature during course of his employment. He was involved in an offence of theft. He was arrested in connection with this offence. Involvement of the Party II in such offence indicates his past record. The Party II has taken into consideration such past record also, while dismissing the Party I from the service. The Party I since after termination of his service is gainfully employed with Skypak Specialities Limited, Courier Division, situated in City Business Centre at R-5, 2nd Floor, C-Pereira Building, Dada Vaidya Road, Panaji-Goa.

7. The Party I did not file rejoinder.

8. On basis of pleadings of both parties, the then learned Presiding Officer framed issues on 1-7-1996 at Exb. 6. The issues are as follows:—

1. Whether the Party I proves that the charges levelled against him in the charge sheet dated 29-7-1993 are vague which amounts to violation of principles of natural justice and hence the domestic inquiry held against him is liable to be set aside?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether the Party I proves that the termination of his services by the Party II is malafide and by way of victimization?
4. Whether the Party I proves that the termination of his services by the Party II with effect from 23-9-1994 is illegal and unjustified?
5. Whether the Party I is entitled to any reliefs?
6. What Award?

9. The then learned Presiding Officer by order dated 15-10-1999, Exb. 12 decided issues No. 1 and 2 as preliminary issues. He answered the issue No. 1 in the negative and the issue No. 2 in the affirmative. He held that the domestic inquiry held against the workman, that is, the Party I is fair and proper, and there is no violation of principles of natural justice. He further held that the workman i.e. the Party I is guilty of charges levelled against him, and that, these charges constitute misconduct under clause XII (c) (e) (n) and (o) of the settlement.

10. The Party I did not challenge findings recorded by the then learned Presiding Officer, on the preliminary issues No. 1 and 2. It follows that, findings on these two preliminary issues have attained finality and those are

binding on both parties to the reference. Since the issues No. 1 and 2 are finally decided as preliminary issues, I am left with job to decide only the remaining issues No. 3 to 6. My findings on these issues are as follows:

Issue No. 3: In the negative.

Issue No. 4: In the negative.

Issue No. 5: In the negative.

Issue No. 6: As per final order.

#### REASONS

11. *Issue Nos. 3 and 4:*— For the sake of convenience and to avoid repetition I am deciding these two issues together. Admittedly, the Party I was working as a Peon in establishment of the Party II which is Co-operative Bank. When he was working as a Peon in Nagarcem Branch at Canacona of the Party II, he was served with charge sheet dated 29-7-1993. Carbon copy of the charge sheet which is also styled as show cause/letter of suspension is produced in the departmental inquiry proceedings (Exb. E-1 colly). Allegations, four in number, which are made against the Party I in the charge sheet are already reproduced in earlier part of the judgment. These allegations, according to the Party II, amount to acts of misconducts under clause XII (c), (d), (e), (n) and (o) respectively of settlement.

12. The Party II appointed Rohit Lobo as Enquiry Officer to make inquiry into the allegations made against the Party I in the charge sheet dated 29-7-1993. Evidence of the Enquiry Officer is at Exb. 10. The Enquiry Officer after holding inquiry came to conclusion that, allegations made against the Party I in the charge sheet are proved, and that, these allegations amount to misconduct under Clause XII (c), (d), (e), (n) and (o) of the settlement of which reference is made in the charge sheet. Findings recorded by him are in the inquiry proceedings (Exb. E-1 colly).

13. On basis of findings recorded by the Enquiry Officer, the Party II decided to dismiss the Party I from service with immediate effect. Therefore, the Party II issued notice on 2-8-1994 and called upon the Party I to show cause within seven days from receipt of the notice as to why he should not be dismissed from service. Xerox copy of the show cause notice bearing signature of General Manager/Secretary of the Party II is at Exb. E-6, colly. The notice was sent by registered post A. D. Xerox copy of acknowledgment receipt bearing signature of the Party I is also at Exb. E-6, colly. The Party I gave reply to this show cause notice on 16-8-1994. Xerox copy of the reply is at Exb. E-8. The Party II did not find substance in the reply. Therefore, the Party II dismissed the Party I from service with immediate effect under its letter of which xerox copy is produced at Exb. E-9.

14. The then learned Presiding Officer, as stated earlier, by his reasoned order dated 15-10-1999 (Exb. 12) held the Party I guilty of the charges which constitute misconduct under clause XII (c), (e), (n) and (o) of the settlement. It follows that only the act in the shape of willful damage

or attempt to cause damage to the property of the bank or any of its customers, which constitute misconduct under clause XII (d) of the settlement and which is also held by the Enquiry Officer as proved against the Party I, is not upheld by the then learned Presiding Officer.

15. Representative appearing on behalf of the Party I argued that there is no sufficient, cogent and convincing evidence to prove the charges levelled against the Party I. Punishment of dismissal which is of extreme nature is certainly highly disproportionate having regard to gravity of the charges proved against the Party I, and which are upheld by the Industrial Tribunal. Under these circumstances, according to him, victimization or unfair labour practice can safely be inferred from conduct of the management in awarding extreme punishment of dismissal, and that, the termination of the service of the Party I is illegal and unjustified. In support of his argument he relied upon decisions given by the Hon'ble Supreme Court in case of Ramakant Mishra v/s State of U. P. and others, reported in S. C. L. J. 1950-84, vol. 8, page 499 and in case of Ved Prakash Gupta, Appellant v/s M/s. Delton Cable India (P) Ltd., respondent, reported in 1984 Supreme Court Cases (L & S) 281.

16. Once this Industrial Tribunal by order dated 15-10-99 (Exb. 12) has held that the inquiry held against the Party I/workman is fair and proper, and that, there is no violation of principles of natural justice, contentions raised by representatives of the Party I regarding merits of the departmental inquiry cannot be taken into consideration. I, therefore, do not agree with his argument so far it relates to merits of the departmental inquiry held against the Party I.

17. Section 2(ra) of the said Act, 1947, defines that 'unfair labour practice' means any of the practices specified in the Fifth Schedule. To discharge or dismiss workmen by way of victimization is one of unfair labour practices on part of the employer. Evidence of the Party I and which is at Exb. 9 does not speak that his services are terminated by the Party II either with malafide intention or by way of victimization.

18. It appears from facts of Ramakant Mishra's case referred to above that he was charged for misconduct which was in the shape of disorderly behaviour or conduct likely to cause a breach of peace threatening an employee within the premises and conduct prejudiced to good order and discipline. The misconduct was consisting of indiscreet, improper and abusive language on one occasion. There was no blame-worthy conduct on his part during fourteen years of his service. In light of these facts the Hon'ble Supreme Court pleased to set aside extreme penalty of dismissal and to order reinstatement of the appellant by withholding two increments.

19. In case of Ved Prakash Gupta there was charge against him that he abused Junior Engineer, S. K. Bagga and one Durg Singh in filthy language. This charge was not of a serious nature. There was nothing on record to show that any previous adverse remark against the



appellant had taken into consideration by management for awarding the extreme penalty of dismissal from service to the appellant. The Hon'ble Supreme Court held that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against the appellant.

20. Acts of misconduct under clause XII (c) and (e) of the settlement and which are proved against the Party I are major misconducts as categorized under clause XII (2) of the said settlement. Therefore, it can safely be said that these acts of misconduct proved against the Party I are of more serious nature than those which are charged against the appellants in reported cases of Ramakant Mishra and of Ved Prakash Gupta referred to above and which are cited before me by representative of the Party I. With respect, I am of opinion that decisions from these two reported cases will not be helpful to hold that, punishment of dismissal imposed upon the Party I is of extreme nature having regard to facts and circumstances of the case including gravity of the charge proved against him.

21. Learned advocate of Party II in reply argued that if cumulative effect of charges proved against the Party I is taken into consideration, it will have to be held that acts of misconduct committed by the Party I warrant punishment of dismissal from his service. The Party II is a co-operative bank. Number of customers come to the Bank everyday in connection with money transactions. Maintenance of discipline in such institutions is equally important. Therefore, according to him, it cannot be said that termination of service of the Party I is with malafide intention and by way of victimization and that the termination of service is illegal and unjustified. He relied upon decisions from various reported cases which now I am going to refer.

22. In case of Hombe Gowda Educational Trust and other appellants v/s State of Karnataka and others respondents reported in 2006 1 Supreme Court Cases 430, respondent No. 3 who was a teacher was subjected to disciplinary proceedings on an allegation that he had assaulted the principal of appellant No. 2 with a chappel. He was found guilty of the said charge and was dismissed from service. The Hon'ble Supreme Court held that:

*"Assaulting a superior at a workplace amounts to an act of gross indiscipline. The respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappel. Punishment of dismissal from services, therefore cannot be said to be wholly disproportionate so as to shock one's conscience."*

23. In case between Mahindra and Mahindra Ltd., and N. B. Naravade reported in 2005 I. LLJ Supreme Court 1129 the Hon'ble Supreme Court held that use of abusive language against a superior officer was such that it could not be termed an indiscipline calling for lesser punishment. Therefore, the Hon'ble Supreme Court

quashed concurrent orders of the three lower courts and upheld the Disciplinary Authority's dismissal of the respondent from service.

24. In case of Subhash Chandra Upadhyaya, Petitioner v/s State of U. P. and others, respondents, reported in 2006 II CLR 1043, the petitioner who was constable was dismissed from service for a misconduct, that is, abusing and threatening his superior to beat with chappel. The Hon'ble High Court of Allahabad held in this case that the order of dismissal was not disproportionate to the charge proved against the petitioner.

25. In case between Madhavan S. and Management of Sundaram Motors, reported in 2006-II LLJ 360, the petitioner who was Junior Clerk addressed a small gathering of employees of claims-section without obtaining prior permission of management for holding meeting and in that meeting he made derogatory remarks and indecent words inciting the employees and thereby committed serious misconduct in terms of Certified Standing orders of the company. On inquiry he came to be dismissed from the service. The Hon'ble High Court of Karnataka held in this case that punishment of dismissal for using abusive language is not disproportionate.

26. Charges proved against the Party I herein, are that he was habitual late-comer and as such he was unable to maintain punctuality in its office timings, that he was habitually remaining absent without prior intimation or authorization, and that, inspite of advise given to him under letter of the Party II he did not submit reply to memo issued against him. The remaining charge which is charge No. 4 that on 25-6-1994 when he reported for duty at 10.30 am, the then Branch Manager objected and instructed him not to attend duty as he was late, that, the Branch Manager directed him to report to the Head Office with letter which was being typed by Fernandes, that, he went to and started abusing and threatening Fernandes with dire consequences, that, he kicked chair and threw it on the floor and started abusing Shirvoikar and Fernandes in filthy language on the premises and in presence of customers of the bank, is not upheld by the Industrial Tribunal.

27. The decisions relied upon by learned advocate of the Party II and which are referred to above appear to be in connection with the charge No. 4 which is not proved against the Party I. For this simple reason, with respect, I hold that these decisions cited before me by the learned advocate of the Party II are not applicable to the present case.

28. As per clause XV of the settlement one of the punishments provided against employee who is found guilty of gross misconduct is dismissal without notice. Out of the charges which are proved against the Party I, charges No. 1 and 2 coming under clause XII (c) and (e) of the settlement are major misconducts. It appears from the charges No. 1 and 2 that inspite of notices given by the Party II from time to time the Party I was habitually late in attending his office, and that, he was in habit of

remaining absent without intimation or prior approval of the Party II. This is certainly against the official discipline. Maintenance of discipline in institution is equally important. Xerox copies of informations supplied by Police Inspector of Panaji Police Station and which are at Exb. E-5 makes it crystal clear that the Party I is involved in various criminal activities. I am aware that these criminal activities is not treated as one of the grounds by the Party II to dismiss the Party I from service. Such past record of the employee can be looked into by the Industrial Court to grant the relief in appropriate cases. In this context, I may rely upon decision given by the Hon'ble High Court of Judicature at Bombay in case of Glindia Limited, petitioner v. C. Gupta and another, respondents reported in 1992 II CLR 678 and which is placed before me by learned advocate of the Party II. Considering all these and above circumstances, and having regard to gravity of the charges proved against the Party I, termination of his service cannot be said to be with malafide intention and by way of victimization and that, the termination is illegal and unjustified. I do not agree with argument advanced by representative of the Party I. My answer to the issues is in negative.

29. Issue No. 5: The Party I did not succeed in proving that termination of his service is with malafide intention and by way of victimization and that the termination is illegal and unjustified. The Punishment of his dismissal from service does not appear to be disproportionate having regard to his conduct and to gravity of the charges proved against him. I, therefore, answer the issue in negative.

30. Before parting with the matter it is necessary to have reference of decisions cited before me by learned advocate of the Party II from reported cases. The Hon'ble Supreme Court held in case between Kendriya Vidyalaya sangathan and another and S. C. Sharma, reported in 2005 II LLJ 153 that, initial burden is on the employee to show that he was not gainfully employed, and that since this burden is not discharged the employee is not entitled to backwages. The Hon'ble High Court of Bombay held in case of Indiana Engineering Works (Bombay) Pvt. Ltd., petitioner v/s The Presiding Officer 5th Labour Court and others, respondents, reported in 1995 II CLR 890 that the respondent No. 2 was gainfully employed and therefore he was not entitled to backwages. In case between

Hindustan Steels, Ltd., Rourkela and Roy (A. K.) and others reported in 1971 LLJ (Supreme Court) 228, the employee was working in an important part of the factory. His services were terminated on basis of police report received by the company as it felt that it was hazardous or prejudicial to retain the employee in service on ground of security. He had put in two years of his service. Besides, three years as apprentice. Considering circumstances of the case the Hon'ble Supreme Court held that the relief of the two years' salary by way of compensation in lieu of reinstatement would be appropriate and proper.

31. In the present case, the Party I did not discharge burden to show that he is not gainfully employed since after his dismissal from service by the Party II. On the contrary, xerox copies produced at Exb. E-10 and E-11 make it clear that he is gainfully employed with Skypack Courier Limited. Since he is not entitled to reinstatement in the service, I hold that question of granting backwages does not survive. I further hold that he is not entitled to the compensation also.

As a result of above discussion and of findings given to the issues No. 4 and 5, I proceed to adjudicate the dispute under the reference by passing order as follows:

#### ORDER

1. It is hereby adjudicated that the action of the management of the Goa Urban Co-operative Bank Ltd., Panaji, Goa in terminating the services of Shri Kishore Kudnekar, sub-staff/peon, with effect from 23-9-1994 is legal and justified.
2. It is hereby adjudicated that the Party I/Workman is not entitled to any of the reliefs claimed by him.
3. No order as to costs.
4. The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-  
(Dilip K. Gaikwad),  
Presiding Officer,  
Industrial Tribunal-cum  
-Labour Court-I.